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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222, SC-1170
Washington, DC 20554

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JUL 31 1997

Re: PCS Installment Payment Issues,
WT Docket No. 97-82
EX PARTE FILING

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Caton:

Yesterday, July 30, 1997, Paul H. Kuzia, Executive Vice President, Technology and Regulatory Affairs, Arch Communications Group, Inc., June E. Walsh, President, Benbow PCS Ventures, Inc. ("Benbow"), and the undersigned met, on behalf of Benbow, with Rudolfo Baca, Legal Advisor to Commissioner Quello to discuss the above-mentioned proceeding. Attached are handouts that were the basis for discussion at this meeting.

In accordance with Commission Rule Section 1.1206(a)(2), an original and one copy of this letter and the attachment are being filed with you for inclusion in the public record.

Please date stamp the attached Stamp and Return copy to acknowledge receipt of this submission.

Please call if you have questions.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN

by: Kathryn A. Zachem

Attachment
cc: Mr. Rudolfo Baca

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Benbow PCS Ventures, Inc.

FCC PRESENTATION REGARDING

ANNUAL INSTALLMENT PAYMENTS

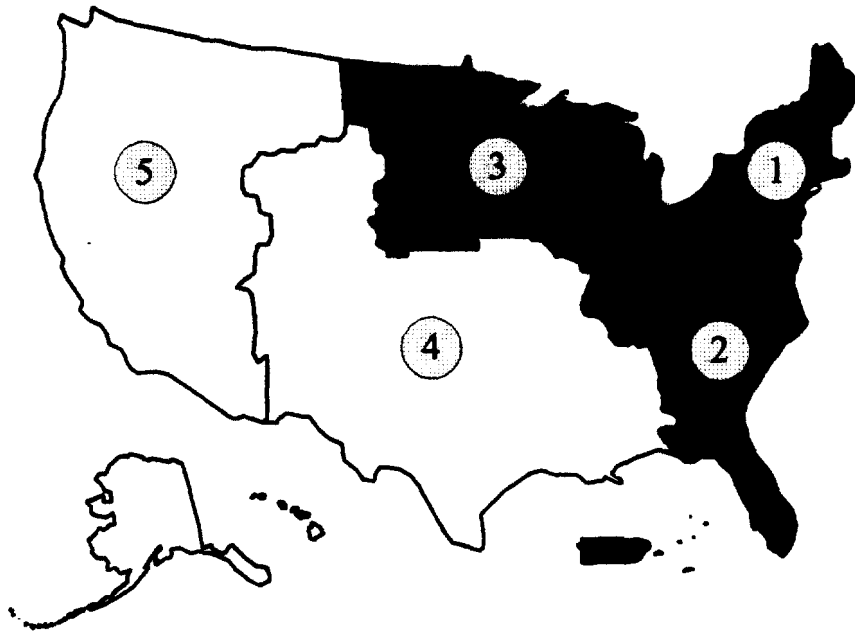
JULY 30, 1997

Benbow PCS Ventures, Inc.

BACKGROUND

- ☐ **A small, woman-owned business created for the purpose of constructing and operating a NPCS network.**
- ☐ **Qualified for a 40% bidding credit in the Regional NPCS auction; high bidder for 2 regional licenses.**
- ☐ **Currently seeking FCC authority for the transfer of control of Page Call, Inc. to Benbow (Page Call is a licensee of 3 regional NPCS licenses). Applications accepted for filing July 25, 1997.**
- ☐ **Once Page Call/Benbow transaction completed, Benbow will hold all regional NPCS licenses on Frequency Block 6 (930.70 to 930.75 MHz, and 901.8250 to 901.8375 MHz).**

Benbow PCS Ventures, Inc



☐ Regions 4 and 5 acquired by Benbow in the Regional NPCS Auction

☒ Regions 1, 2 and 3 to be acquired by Benbow from Page Call (transfer application pending)

Benbow PCS Ventures, Inc.

OWNERSHIP

- ☐ **Equity owned 50.1% by Ms. June Walsh and 49.9% by The Westlink Company. Ms. Walsh also owns and controls 85% of Benbow's voting stock; Westlink owns and controls 15%.**

June Walsh

- ☐ **A 25-year veteran of the paging industry.**
- ☐ **Transferred her ownership interest in Cal Autofone and Radio Electronics Products Corporation, two small companies providing traditional paging service in northern California, into Benbow.**

The Westlink Company

- ☐ **A subsidiary of Arch Communications Group, a leading provider of paging services with over 3 million units in service in more than 40 states, and in 80 of the 100 largest markets in the United States.**
- ☐ **As parent of Westlink, Arch is providing, on a commercially reasonable basis, management and turnkey services to Benbow.**

Benbow PCS Ventures, Inc.

BENBOW'S INSTALLMENT PAYMENT HISTORY

- ☐ **Eligible for installment payments with interest-only payments due for the first 2 years, interest and principal payments due for the remaining 8 years.**
- ☐ **Commenced making interest-only payments on March 30, 1995, and interest and principal payments on March 30, 1997. Payments to date exceed \$ 3.2 million for its 2 regional NPCS licenses.**
- ☐ **Timely made all scheduled payments through March 30, 1997.**
- ☐ **First took advantage of the automatic 90-day grace period (*see* Section 1.2110(e)(4)(i) of the Commission's rules) for the second interest and principal payment originally due June 30, 1997.**
- ☐ **Grace period for this payment expires September 29, 1997.**
- ☐ **Absent granted waiver or similar relief, Benbow must make payment or be in default (*see* Section 1.2110(e)(4)(iii)).**

Benbow PCS Ventures, Inc.

STATUS OF INSTALLMENT PAYMENT OPTIONS AFFORDED SMALL BUSINESSES

- ☐ All installment payment obligations owed by C block broadband PCS licensees suspended March 31, 1997. *See Installment Payments for PCS Licenses, DA 97-649, Order (Wir. Tel. Bur. Mar. 31, 1997)*
- ☐ NPCS licensee filed request similar to broadband request — asked the Commission to: 1) adopt annual (instead of quarterly) payments for NPCS licensees; and (2) as it did for C block licensees, suspend all NPCS installment payment obligations until the Commission resolves the modification request. *See Letter to Daniel Phythyon filed April 10, 1997 by CONXUS Communications.*
- ☐ Benbow filed letter in support of CONXUS letter April 11, 1997; Page Call filed letter in support April 22, 1997.
- ☐ The Commission has not acted on the NPCS licensees' requests — meanwhile, broadband, small business licensees continue to enjoy payment relief.

Benbow PCS Ventures, Inc.

REQUESTED RELIEF

- ☐ ***Interim Relief*** — Deadlines should be suspended until such time as the Commission resolves the three pending NPCCS requests to modify installment payment plans by moving from a quarterly to an annual payment schedule.

Grant of this request will impact only *three* NPCCS licensees: CONXUS (formerly PCSD Development), Benbow (which will hold Page Call's licenses) and Insta-Check.

Interim relief is needed no later than August 31, 1997 — the grace period for Benbow's June 30th quarterly installment payment expires September 29, 1997.

Pursuant to Section 1.2110(e)(4)(iii) of the rules, Benbow's license could automatically cancel if further grace period relief is denied after August 31, 1997:

Section 1.2110(e)(4)(iii) of the rules states that "Following expiration of any grace period without successful resumption of payment *or upon denial of a grace period request . . .* the license will *automatically* cancel and the Commission will initiate debt collection procedures. . . ." (emphasis added).

Benbow needs time to budget capital needed to make quarterly payment on September 29, 1997.

Expedited action by Commission on interim relief proposal needed to avoid unnecessarily expending resources.

- ☐ ***Long Term Relief* — If the Commission modifies the broadband installment payment option to require annual rather than quarterly payments, the Commission should do the same for NPCS licensees.**

Benbow PCS Ventures, Inc.

BASIS FOR RELIEF

- ***Regulatory Parity*** — Affording financing relief only to broadband PCS licensees (by providing them better terms on their installment payment obligations) to the exclusion of NPCS licensees is contrary to Congress' mandate of regulatory parity among CMRS providers furnishing the same or similar services.

All CMRS — including one-way messaging and data, two-way voice, messaging and data — are competing services or have the reasonable potential to become competing services in the CMRS marketplace.¹

The ability to offer a combination of services, such as that provided by broadband PCS carriers, allows a CMRS provider to compete with a greater number of other CMRS providers.² It is precisely this phenomenon that places broadband PCS in direct competition with NPCS.

Broadband PCS carriers, such as Sprint Spectrum, already provide paging services and two-way messaging capability to their customers, two services NPCS licensees hope to provide once their networks are constructed.

¹ *CMRS Third Report and Order*, 9 FCC Rcd 7988 ¶ 12 (1994).

² *Id.* at ¶ 75.

- ❑ ***Equity* — any change to the financial obligations of small businesses that acquired PCS licenses at auction should apply to all small business PCS licensees, broadband and narrowband alike.**

Broadband and NPCS small business licensees, have very similar capital requirements and are confronting the same financing realities and problems.

NPCS and broadband licensees are attempting to access the same capital fund pool to finance both license payments and capital, construction and operating expenses.

Affording broadband PCS licensees revised payment options disadvantages NPCS licensees when they seek funding from Wall Street; Wall Street perceptions of FCC favoritism will seriously hinder NPCS financing.

Suspending broadband PCS licensees' quarterly installment payments gives broadband licensees a competitive edge over NPCS licensees in developing their networks — broadband PCS licensees can take capital earmarked for quarterly payments and instead invest in constructing their networks and establishing a customer base.

Modifying the repayment schedule from quarterly to annual will provide NPCS licensees with relief from temporarily depressed wireless market conditions. Annual payments will also afford NPCS licensees the flexibility to adjust their fund raising efforts in response to future market conditions.

Annual payment schedules will not reduce the amount of money the government receives — the government suffers no harm.

Annual payment plans are far less administratively burdensome for the government to oversee.